

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

3 | Darral Ellis

Plaintiff,

V.

Warden Howell,

Defendant.

Case No. 2:19-cv-2164-APG-VCF

ORDER

This action began with a pro se civil rights complaint filed under 42 U.S.C. § 1983 by a prisoner. On December 20, 2019, Magistrate Judge Ferenbach ordered plaintiff Darral Ellis a fully complete application to proceed in forma pauperis or pay the full filing fee of \$300 within 30 days from the date of that order. ECF No. 3 at 1-2. The 30-day period has expired, and Ellis has not filed an application to proceed in forma pauperis, paid the full fee, or otherwise responded to Judge Ferenbach’s order.

District courts have the inherent power to control their dockets and “[i]n the exercise of that power, they may impose sanctions including, where appropriate . . . dismissal” of a case.

17 *Thompson v. Hous. Auth. of City of Los Angeles*, 782 F.2d 829, 831 (9th Cir. 1986). A court may
18 dismiss an action with prejudice based on a party's failure to prosecute an action, failure to obey
19 a court order, or failure to comply with local rules. *See Ghazali v. Moran*, 46 F.3d 52, 53-54 (9th
20 Cir. 1995) (affirming dismissal for noncompliance with local rule); *Ferdik v. Bonzelet*, 963 F.2d
21 1258, 1260-61 (9th Cir. 1992) (affirming dismissal for failure to comply with an order requiring
22 amendment of complaint); *Carey v. King*, 856 F.2d 1439, 1440-41 (9th Cir. 1988) (affirming
23 dismissal for failure to comply with local rule requiring pro se plaintiffs to keep court apprised of

1 address); *Malone v. U.S. Postal Service*, 833 F.2d 128, 130 (9th Cir. 1987) (affirming dismissal
2 for failure to comply with court order); *Henderson v. Duncan*, 779 F.2d 1421, 1424 (9th Cir.
3 1986) (affirming dismissal for lack of prosecution and failure to comply with local rules).

4 In determining whether to dismiss an action for lack of prosecution, failure to obey a
5 court order, or failure to comply with local rules, the court must consider several factors: (1) the
6 public's interest in expeditious resolution of litigation; (2) the court's need to manage its docket;
7 (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of cases on
8 their merits; and (5) the availability of less drastic alternatives. *See Thompson*, 782 F.2d at 831;
9 *Henderson*, 779 F.2d at 1423-24; *Malone*, 833 F.2d at 130; *Ferdik*, 963 F.2d at 1260-61;
10 *Ghazali*, 46 F.3d at 53.

11 Here, the first two factors (the public's interest in expeditiously resolving this litigation
12 and my interest in managing the docket) weigh in favor of dismissal. The third factor (risk of
13 prejudice to the defendants) also weighs in favor of dismissal because a presumption of injury
14 arises from the occurrence of unreasonable delay in filing a pleading ordered by the court or
15 prosecuting an action. *See Anderson v. Air West*, 542 F.2d 522, 524 (9th Cir. 1976). The fourth
16 factor (public policy favoring disposition of cases on their merits) is greatly outweighed by the
17 factors in favor of dismissal. Finally, a court's warning to a party that his failure to obey the
18 court's order will result in dismissal satisfies the "consideration of alternatives" requirement.
19 *Ferdik*, 963 F.2d at 1262; *Malone*, 833 F.2d at 132-33; *Henderson*, 779 F.2d at 1424. Judge
20 Ferenbach's order expressly stated: "IT IS FURTHER ORDERED that if Plaintiff does not
21 timely comply with this order, dismissal of this action may result." ECF No. 3 at 2. Thus, Ellis
22 had adequate warning that dismissal would result from his noncompliance with Judge
23 Ferenbach's order.

1 I THEREFORE ORDER that this action is dismissed without prejudice based on plaintiff
2 Darral Ellis' failure to file an application to proceed in forma pauperis or pay the full filing fee in
3 compliance with Judge Ferenbach's order dated December 20, 2019.

4 I FURTHER ORDER the Clerk of Court to close the case and enter judgment
5 accordingly.

6 Dated: February 3, 2020.



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ANDREW P. GORDON
UNITED STATES DISTRICT JUDGE